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JAN 23 2007

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY CSOS

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

No. 06-0010

PAMELA K. ALLEN,
Bar No: 010135
Respondent.

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The complaint in this matter was filed on August 31, 2006, and served by mail on Respondent, Pamela K. Allen, on September 8, 2006. Respondent failed to file an Answer within twenty days as required by Rule 57(b), Ariz.R.Sup.Ct. The Disciplinary Clerk filed a Notice of Default on October 4, 2006. Respondent failed to file an Answer within ten days of the Notice as required by Rule 57(d), Ariz.R.Sup.Ct. The Disciplinary Clerk entered a Default on October 25, 2006.

On November 8, 2006, the State Bar requested an Aggravation/Mitigation Hearing, which was set for and heard on December 7, 2006. The State Bar appeared at the hearing, but Respondent did not. At the conclusion of the hearing, the Hearing Officer requested that the State Bar submit its proposed Findings of Facts and Conclusions Of Law, and address proportionality.

FINDINGS OF FACT

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on November 9, 1985.

1 2. On December 29, 2005, the State Bar received an insufficient funds notice
2 on Respondent's JP Morgan Chase Bank Arizona Bar Foundation client trust account.

3 3. On December 27, 2005, check 7048 in the amount of \$375 attempted to pay
4 against the account when the balance was \$100.00.

5 4. The bank paid the check and charged an insufficient funds fee of \$30.00,
6 leaving the account with a negative balance of \$305.00.

7 5. On January 6, 2006, Nancy Heffron, Records Examiner ("Records
8 Examiner") for the State Bar, sent an initial screening letter to Respondent and requested an
9 explanation regarding the overdraft.
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11 6. Respondent did not respond.

12 7. By letter dated February 8, 2006, the Records Examiner advised Respondent
13 that her failure to respond could, in itself, be grounds for discipline and again requested that
14 she respond.

15 8. Respondent did not respond.

16 9. On or about February 23, 2006, the Records Examiner left a telephone
17 message with Respondent's office to confirm the address and to confirm that Respondent
18 had received the State Bar's letters.

19 10. Respondent returned the Records Examiner's telephone call on February 24,
20 2006 and spoke to Ms. Heffron.

21 11. Respondent stated that she had been very busy with a client, who had to be
22 put into assisted living, and which took up a great deal of her time personally and
23 professionally.
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1 12. Respondent stated that she would have her written Response to the State Bar
2 by February 27, 2006.

3 13. Respondent submitted her Response dated February 27, 2006 by hand-
4 delivery on February 28, 2006.

5 14. Respondent, in her response, stated that, at the end of the year, her office
6 generally does an accounting of the trust account to make sure there is an extra \$200.00 in
7 the trust account to cover any unexpected bank fees.

8 15. Respondent explained that at the end of 2005, Respondent discovered that a
9 Workers' Compensation client, Maryann Olmsted, had a November 29, 2005, check that
10 Ms. Olmstead still had not cashed.

11 16. Respondent stated that Respondent's office called client Olmsted, who said
12 that she had just deposited the outstanding check, but did not mention that she had also not
13 cashed an October trust check as well, and had deposited it at the same time she deposited
14 the November check.

15 17. Respondent stated she had already accounted for the \$375.00 November
16 check, but not the \$375.00 October check, and so Respondent's account showed a shortage
17 of \$75.00.

18 18. Respondent stated that the bank paid the check and charged the account
19 \$30.00.

20 19. Respondent submitted with her Response copies of the relevant insufficient
21 funds checks and an unsigned affidavit of client Olmsted.

22 20. Respondent stated she would forward client Olmsted's signed affidavit
23 regarding the trust check once she received it.
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1 21. On or about March 9, 2006, the Records Examiner requested additional
2 information from Respondent, including her trust account bank statements covering the
3 periods of December 2005 and January 2006 and the canceled checks, duplicate deposit
4 slips, general ledger/check register and individual client ledgers that correspond to the
5 requested trust account bank statements.

6 22. Respondent submitted a Response on April 5, 2006 (dated April 3, 2006)
7 and attached the signed Affidavit from client Olmsted referenced in her February 28, 2006
8 response, but did not submit the remainder of the requested information.

9 23. Respondent stated that she was preparing the additional paperwork requested
10 but that because she had been issuing client Olmsted Worker's Compensation checks since
11 1997, she would like an extension of 30 days to copy the back side of each monthly check
12 client Olmsted cashed since 1997.

13 24. On April 6, 2006, the Records Examiner telephoned Respondent and
14 clarified that Respondent need only provide the trust account records for two months; the
15 months of December 2005 and January 2006.

16 25. The Records Examiner granted Respondent a 10-day extension to respond,
17 making the Response due by April 17, 2006.

18 26. Respondent failed to respond.

19 27. On or about April 21, 2006, the Records Examiner sent a letter to
20 Respondent, reminding Respondent of her obligation to respond and advising Respondent
21 that her failure to respond could be grounds, in itself, for discipline.
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1 28. A copy of the Records Examiner's March 9, 2006 request for information to
2 Respondent was provided to Respondent for her reference as well as a reference to their
3 telephone conversation on April 6, 2006.

4 29. Respondent did not submit a timely Response.

5 30. Respondent submitted her untimely Response on April 24, 2006 (dated April
6 21, 2006).

7 31. Respondent submitted some of the requested information, but did not submit
8 a general ledger/check register or individual client ledgers.

9 32. Respondent stated in her response that check 7056 should have been written
10 directly to the law firm instead of being written to "cash".

11 33. Respondent further stated that the funds from check 7056 were from an
12 attorney fee award of \$2600.00 that was put into the trust account and the remaining
13 \$202.90 was what was left in the trust account after all checks had cleared.

14 34. Respondent stated that she checked with all of her Worker's Compensation
15 clients to make sure they had all cashed their checks and client Olmsted was the only one
16 who had not cashed her checks.

17 35. On May 9, 2006, the Records Examiner sent a second request for additional
18 information to Respondent including a request for the duplicate deposit slips that
19 correspond to eight deposits made into her trust account from December 23, 2005 through
20 January 31, 2006 and the identity of the clients on whose behalf those deposits were made;
21 copies of her general ledger/check register that correspond to her December 2005 and
22 January 2006 trust account bank statements, copies of the individual client ledgers
23 including the bank fees/administrative funds ledgers or their equivalents that correspond to
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1 the same referenced bank statements, and the identity of the client on whose behalf the
2 \$202.90 was left in her trust account.

3 36. Respondent was given twenty days to respond, making her response due on
4 May 30, 2006.

5 37. On June 1, 2006, the Records Examiner received a hand-delivered letter
6 from Respondent in which she requested an additional ten days to respond.

7 38. Respondent stated that she would submit her Response by June 9, 2006.

8 39. The Records Examiner telephoned Respondent on or about June 2, 2006 and
9 left a telephone message with Respondent's office asking that Respondent return her call
10 regarding Respondent's request for an extension.

11 40. Respondent did not return the Records Examiner's telephone call and did not
12 submit a response.

13 41. On June 21, 2006, the Probable Cause Panelist of the State Bar of Arizona
14 filed a Probable Cause Order in Respondent's matter for violations of Rule 42,
15 Ariz.R.S.Ct., including but not limited to ERs 1.15 and 8.1(b), Rules 43 (a) & (d), 44 and
16 53(d) and (f), Ariz.R.Sup.Ct.

17 42. On June 29, 2006, the State Bar sent Respondent a Subpoena Duce Tecum
18 ("Subpoena") by certified mail to her actual physical address on Florence Boulevard rather
19 than to Respondent's address of record with the State Bar at that time.

20 43. Respondent was given ten days from the date that the subpoena was signed
21 to respond, making her response due on July 10, 2006.

22 44. Respondent did not respond.

1 45. On July 20, 2006, the State Bar served a subpoena on J.P. Morgan Chase
2 Bank requesting copies of all deposits, deposit slips and offsetting deposited items that were
3 credited to Respondent's trust account from December 1, 2005 through January 31, 2006.

4 46. On or about July 21, 2006, the Post Office returned the certified mail
5 previously sent to Respondent with the subpoena to the State Bar as unclaimed.

6 47. On or about July 24, 2006, the State Bar received back the unclaimed,
7 unopened subpoena served by certified mail on Respondent. The outside of the envelope
8 had notations that the Post Office had notified Respondent on two occasions, July 3, 2006
9 and July 8, 2006, that she had certified mail to pick up.

10 48. On July 25, 2006, a State Bar investigator ("Investigator") spoke with
11 Respondent on the telephone and confirmed that she was still located at the address on
12 Florence Boulevard at which the subpoena had been sent.

13 49. When the Investigator told Respondent that the State Bar had sent her a
14 subpoena by certified mail and that the certified mail had been returned unclaimed,
15 Respondent stated that she had been out of state on vacation for a while.

16 50. The Investigator informed Respondent that the State Bar would be serving
17 the subpoena again by certified mail. Respondent informed the Investigator that she would
18 look out for it.

19 51. Prior to the time that the State Bar remailed the subpoena, Respondent
20 changed her address of record with the State Bar to her physical address on Florence
21 Boulevard.

22 52. On July 26, 2006, the State Bar served Respondent by certified mail with a
23 copy of the same subpoena previously sent to her on June 29, 2006.
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1 53. The subpoena was sent to Respondent at the Florence Boulevard address,
2 Respondent's new address of record with the State Bar, by certified mail.

3 54. Respondent's Response was due ten days from the date of the certified cover
4 letter accompanying the subpoena, making her Response due to the State Bar on or before
5 August 7, 2006.

6 55. Respondent did not respond.

7 56. The State Bar received back from the Post Office the return receipt
8 certification card, signed by Respondent with her signature dated August 7, 2006.

9 57. Review of Respondent's trust account records revealed that Respondent
10 failed to properly safeguard client funds and failed to exercise due professional care in the
11 performance of her duties.

12 58. Respondent failed to verify the collection of funds before drawing
13 disbursements from her client trust account.

14 59. Respondent failed to submit, or maintain, individual client ledgers or the
15 equivalent or a general ledger/check register, or duplicate deposit slips or the equivalent.

16 60. Respondent stated that, at the end of the year, her office does a general
17 accounting of the trust account to make sure there is an extra \$200.00 in the trust account to
18 cover any unexpected bank fees.

19 61. Respondent failed to submit an administrative funds ledger to account for
20 the \$200.00 in funds she claimed to maintain in her account to cover bank fees.

21 62. Respondent failed to maintain required trust account ledgers, specifically
22 individual client ledgers, bank fees/administrative funds ledgers, a general ledger/check
23 register or duplicate deposit slips or the equivalent.

1 63. Check 7056 was issued to "cash" instead of to Respondent's law firm or to
2 any other payee.

3 64. Respondent failed to record all transactions promptly and completely, failed
4 to maintain duplicate deposit slips or the equivalent and failed to maintain an account
5 ledger or the equivalent for each client for whom monies were received in trust.

6 65. Respondent failed to conduct monthly three-way reconciliations.

7 66. In addition to not responding promptly to the Records Examiner's requests
8 for information, Respondent repeatedly failed to furnish copies of requested records such as
9 individual client ledgers and bank fee/administrative funds ledgers as requested by the
10 Records Examiner or Bar counsel, including by a Subpoena Duces Tecum.

11 67. The Records Examiner was able to determine from the records received
12 from Respondent and by subpoena that Respondent had deposited \$1,000.00 into her trust
13 account that was not for the benefit of any particular client.

14 68. The Records Examiner was able to determine from the records received
15 from Respondent and by subpoena that Respondent's trust account held funds on behalf of
16 seven clients for the period of December 2005 to January 2006.

17 69. Respondent failed to provide the State Bar with her general ledgers for her
18 trust account and did not provide individual client ledgers for those clients.

19 CONCLUSIONS OF LAW

20 1. As Respondent was properly served and noticed and failed to respond to the
21 complaint as required by the Rules, the allegations of the complaint are deemed admitted.
22 Rule 53(c)(1), Ariz.R.Sup.Ct., *Matter of Zang*, 158 Ariz. 251 (1988).
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2. Respondent's conduct as described in this count violated Rule 42, Ariz.R.S.Ct., specifically, ERs 1.15 and 8.1(b), Rules 43 (a) & (d), 44 and 53(d) and (f), Ariz.R.Sup.Ct.

RECOMMENDED SANCTION

This recommendation is based upon the applicable *ABA Standards for Imposing Lawyer Sanctions* ("Standards"), 1991 edition, including the relevant aggravating and mitigating factors, as well as its review of the applicable case law regarding proportionality of the proposed sanction.

A. APPLICABLE STANDARDS.

The *Standards* provide guidance with respect to an appropriate sanction in this matter. The Supreme Court and Disciplinary Commission consider the *Standards* suitable guidelines. *In re Peasley*, 208 Ariz. 27, 23, 33, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

The Supreme Court and the Disciplinary Commission consistently use the *Standards* to determine appropriate sanctions for attorney discipline. *See In re Clark*, 207 Ariz. 414, 87 P.3d 827 (2004). The *Standards* are designed to promote consistency in sanctions by identifying the relevant factors the court should consider and then applying these factors to situations in which lawyers have engaged in various types of misconduct. *Standard 1.3, Commentary*.

In determining an appropriate sanction, the Court and the Disciplinary Commission consider the duty violated, the lawyer's mental state, the presence or absence of actual or potential injury, and the existence of aggravating and mitigating factors, and proportional case law. *In re Peasley, supra.*, 208 Ariz. at 33, 90 P.3d at 772; *Standard 3.0*.

B. DUTIES

1 The *Standards* identify four distinct categories in which a lawyer has specific duties;
2 to the client, to the general public, to the legal system and to the profession. Respondent's
3 duties to her client, the public, the legal system and the profession are all implicated in this
4 matter.

5 Respondent's misconduct as it relates to her client implicates *Standard 4.1*.
6 *Standard 4.1* is typically applied when there is a finding of violations of Rule 42,
7 Ariz.R.Sup.Ct., specifically ER 1.15. *Standard 4.1* provides:

8 4.12 Suspension is generally appropriate when a lawyer knows or should know he
9 is dealing improperly with client property and causes injury or potential injury to a
10 client.

11 4.13 Reprimand [Censure in Arizona] is generally appropriate when a lawyer is
12 negligent in dealing with client property and causes injury or potential injury to a
13 client.

14 Respondent's misconduct as it relates to the public implicates *Standard 5.1*.
15 *Standard 5.1* is typically applied when there is a finding of violations of Rule 42,
16 Ariz.R.Sup.Ct., specifically ER 8.1 and provides:

17 5.14 Admonition [Informal Reprimand in Arizona] is generally appropriate when
18 a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness
19 to practice law.

20 Respondent's misconduct as it relates to the legal profession implicates *Standard 7.0*.
21 *Standard 7.0* is typically applied when there is a finding of violations of Rule 42,
22 Ariz.R.Sup.Ct., specifically ER 8.1 and provides:

23 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
24 conduct that is a violation of a duty owed as a professional, and causes injury or
25 potential injury to a client, the public, or the legal system.

7.3 Reprimand [Censure in Arizona] is generally appropriate when a lawyer
negligently engages in conduct that is a violation of a duty owed as a professional,
and causes injury or potential injury to a client, the public, or the legal system.

1 The *Standards* do not account for multiple charges of misconduct. The ultimate
2 sanction imposed should at least be consistent with the sanction for the most serious instance
3 of misconduct among a number of violations; it might well be and generally should be
4 greater than the sanction for the most serious misconduct. *Standards* at page 6; *In re*
5 *Redeker*, 177 Ariz. 305, 868 P.2d 318 (1994).

6 The *Standards* do not provide specific guidelines for misconduct covered by Rules
7 43, 44 or 53, Ariz.R.Sup.Ct. The Supreme Court has recognized that a lawyer's duty as an
8 officer of the court includes the obligation to fully and actively cooperate with the State Bar
9 when his conduct is called into question. See *In re Brown*, 184 Ariz. 480, 483, 910 P.2d
10 631, 634 (1996) (lawyer received a nine month suspension) and *In re Davis*, 181 Ariz. 263,
11 266, 889 P.2d 621, 624 (1995) (lawyer received a suspension).

12 The range of presumptive sanctions in this matter, therefore, is between an informal
13 reprimand and suspension.
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15 C. STATE OF MIND

16 Respondent acted knowingly as to most of the misconduct in this case. Respondent
17 knew that she was not keeping appropriate client and trust account records. Respondent
18 knew that she had commingled more than a minimum amount of her own money with that
19 of her clients in the trust account. Respondent knew that the State Bar was seeking
20 information from her but she knowingly decided not to fully respond. Respondent knew that
21 the Panelist had issued a subpoena for records but she knowingly failed to respond.
22 Respondent knew that the State Bar had filed a complaint against her but she knowingly
23 failed to respond.
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25 D. ACTUAL OR POTENTIAL INJURY

1 Respondent caused actual and/or potential injury to her client, the public, the
2 profession and the legal system by her conduct.

3 Respondent injured client Olmstead when she issued a check that was returned for
4 insufficient funds when the client tried to negotiate it. By doing so, Respondent caused
5 harm and/or potential harm to other clients as well by converting the funds held in her trust
6 account on their behalf for the use of another client.

7 Respondent caused potential injury to all of her clients by failing to maintain
8 appropriate client records and to practice mandated trust account procedures. Respondent's
9 commingling of her own funds with that of her clients subjected them to potential injury
10 from liens of third parties.

11 Respondent's failure to respond to inquiries from the State Bar shows a disregard for
12 the Rules of Professional Conduct and borders on contempt for the legal system. Her
13 inaction undermines the profession's efforts at self-regulation, damaging both its credibility
14 and reputation. See *In re Brown, supra.*, 184 Ariz. at 483, 910 P.2d at 634 and *In re Davis,*
15 *supra.*, 181 Ariz. at 266, 889 P.2d at 624.

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18 **E. AGGRAVATING AND MITIGATING FACTORS**

19 The *Standards* suggest a recommended sanction for various types of conduct which
20 sanction may increase or decrease depending on the evidence of aggravation or mitigation.
21 *Standard 9.21.*

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23 Considering *Standard 9.22*, the following are found in this case and should be
24 considered in aggravation: a pattern of misconduct and multiple offenses; bad faith
25 obstruction of the disciplinary proceeding by intentionally failing to comply with the rules

1 or orders of the disciplinary agency; refusal to acknowledge wrongful nature of conduct;
2 and substantial experience in the practice of law. Respondent was admitted to the Bar in
3 1985 and has about twenty-one years of legal experience.

4 Considering *Standard* 9.32, the following is found in this case and should be
5 considered in mitigation: absence of a prior disciplinary record.

6 PROPORTIONALITY

7 In the past, the Supreme Court has consulted similar cases in an attempt to assess the
8 proportionality of the sanction recommended. See *In re Struthers*, 179 Ariz. 216, 226, 887

9 P.2d 789, 299 (1994). The Supreme Court has recognized that the concept of
10 proportionality review is "an imperfect process" as no two cases "are ever alike." *In re*

11 *Owens*, 182 Ariz. 121, 127, 893, P.3d 1284, 1290 (1995).

12 To have an effective system of professional sanctions, there must be internal
13 consistency, and it is appropriate to examine sanctions imposed in cases that are factually
14 similar. *In re Peasley, supra.*, 208 Ariz. at 33, 90 P.3d at 772. However, the discipline in
15 each case must be tailored to the individual case, as neither perfection nor absolute
16 uniformity can be achieved. *Id.* at 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76,
17 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

18 Sanctions for failure to comply with the Supreme Court Rules concerning trust
19 accounts and record-keeping range from informal reprimands to suspensions, although most
20 are for informal reprimands ("IRP") or censures with probation where, as in our case, there
21 is no evidence of abandonment of clients. See e.g., *In re Davis*, SB 05-0148-D (2005)
22 (censure by agreement, 1 year probation, completion of the State Bar's Trust Account Ethics
23 Enhancement Program ("TAEPP")); *In re McKindles*, SB 05-0065-D (2005) (censure by
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1 agreement, 1 year probation, participation in the State Bar's Law Office Management
2 Assistance Program ("LOMAP")); *In re Miranda*, SB 05-0129-D (2005) (censure by
3 agreement, 1 year probation, LOMAP); *In re Thur*, DC 04-1968 (2005) (IRP by agreement,
4 6 months probation, TAEPP); and *In re Wicks*, SB 05-0140-D (2005) (censure by
5 agreement, 1 year probation, LOMAP).

6 Case law suggests that a suspension is proportional in cases where the Respondent
7 failed to respond to the State Bar and the Panelist. *See, for example, In re Brown*, 184 Ariz.
8 480, 483, 910 P.2d 631, 634 (1996) (9 month suspension for failure to respond, failure to
9 comply with court orders and more); *In re Davis*, 181 Ariz. 263, 266, 889 P.2d 621, 624
10 (1995) (suspension) and *In re Crown*, SB-03-0129-D (2003) (six months and one day
11 suspension).

12 In *Crown*, a suspended member of the Bar was again suspended for six months and
13 one day, placed on probation for two years, and ordered to participate in LOMAP and the
14 State Bar's Ethics Enhancement Program after failing to answer the State Bar's complaint.
15 The Hearing Officer found, based on admission by default, that Crown violated Rule 42,
16 Ariz.R.Sup.Ct., specifically ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 1.15, ER 1.16, ER
17 3.2, ER 4.1, ER 8.1(b), ER 8.4(d) and Rules 43, 44 and 51(h), Ariz.R.Sup.Ct., by not
18 properly handling client funds or keeping records as required and failing to timely or
19 sufficiently respond to the State Bar's investigation, as well as other misconduct. Four
20 aggravating factors were found and two mitigating factors.

21 Although in this case Respondent was not already suspended, she, as in *Crown*,
22 mishandled client funds, failed to maintain appropriate records, failed to respond during the
23 State Bar's investigation and defaulted in the resulting formal litigation.
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1 A suspension is within the range and is proportional to other cases with similar
2 ethical violations as found in this case. In addition to the trust account violations,
3 Respondent failed to respond to inquiries by the State Bar on three separate occasions. As
4 such, a suspension of six months and one day is the appropriate sanction.

5 **CONCLUSION**

6 The Hearing Officer therefore recommends that the appropriate sanction for
7 Respondent's conduct in this case is an order of suspension for six months and one day. If
8 reinstated, Respondent should be placed on probation for two years and ordered to
9 participate in TAEPP and LOMAP, as well as any other conditions found to be appropriate
10 at the time of reinstatement.

11
12 **RESPECTFULLY SUBMITTED** this 23rd day of January, 2007.

13
14 *Juan Pérez Medrano/cs*
15 **Juan Pérez-Medrano**
16 **Hearing Officer 9D**

17 Original filed with the Disciplinary Clerk of
18 the Supreme Court this 23rd day
of January, 2007.

19 Copies of the foregoing mailed this 23rd day
20 of January, 2007, to:

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